

Filed 7-20-10 *fp*

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR MARICOPA COUNTY

STATE of ARIZONA,

Plaintiff,

vs.

STEPHEN WETZEL, ANDREW KUNASEK,  
SANDRA WILSON, GARY DONAHOE,  
THOMAS IRVINE, AND DAVID SMITH,

Defendants.

494 GJ 156

REQUEST TO UNSEAL TRANSCRIPTS,  
EXHIBITS AND OTHER MATTERS  
ATTENDANT TO 494 GJ 156

(Assigned to the Honorable  
Ruth McGregor, Special Master)

(filed under seal)

(ORAL ARGUMENT REQUESTED)

The Maricopa County Attorney's Office, through undersigned counsel requests that the transcripts, exhibits and other matters attendant to the 494 Grand Jury 156 presentation be unsealed. The States position is set forth in attached Memorandum.

DATED this 20<sup>th</sup> day of July, 2010.

RICHARD M. ROMLEY  
MARICOPA COUNTY ATTORNEY

BY



PAUL W. AHLER

CHIEF DEPUTY COUNTY ATTORNEY

## MEMORANDUM OF POINTS AND AUTHORITIES

On December 9, 2009, Judge Gary Donahoe, then the criminal presiding Maricopa County Superior Court judge was charged with three felony counts: Hindering Prosecution, A Class 5 felony, Obstructing Criminal Investigation, A Class 5 Felony, and Bribery of a Public Servant, A Class 4 Felony. The charges were filed via a Direct Complaint by Deputy County Attorney Lisa Aubuchon. The case was ultimately assigned to Pinal County Superior Court Judge William O'Neill who set the matter for a Preliminary Hearing on January 5, 2010.

On January 4, 2010, Deputy County Attorney Lisa Aubuchon began the aforementioned Grand Jury presentation. There were two areas involved in the presentation. The first area of inquiry involved allegations that Stephen Wetzel, Andrew Kunasek, and Sandi Wilson had illegally used public monies on two separate occasions to conduct sweeps for electronic listening devices at County offices. The amount of public money expended for these services was approximately \$15000. Andrew Kunasek was at the time the Chairman of the Maricopa County Board of Supervisors. Sandi Wilson is the Deputy Maricopa County Manager. Mr. Wetzel is the Chief Information Officer of Enterprise Technology for Maricopa County. The second area of inquiry involved allegations that Judge Gary Donahoe, Thomas Irvine, and David Smith had illegally conspired to Hinder Prosecution and Obstruct a Criminal Investigation involving what has been commonly referred to as the "court tower investigation." David Smith is the Maricopa County Manager. Tom Irvine is a private attorney retained by the Board of Supervisors. Additional charges of Bribery were sought against Judge Donahoe involving the court tower investigation.

Testimony was taken on January 4, 2010. Detective Tim Abrahamson of the Maricopa County Sheriff's Office was the primary witness on the "bug sweep investigation." Chief Deputy David Hendershott from the Maricopa County Sheriff's Office was the primary witness

on the "court tower investigation." The Grand Jury at the conclusion of the testimony requested a draft Indictment. The Grand Jury did not reach any decision and agreed to reconvene on January 6, 2010.

On January 5, 2010 Judge O'Neill stayed the Preliminary Hearing on the Donahoe Direct Complaint based on pleadings filed by his attorneys. On that same date Deputy County Attorney Lisa Aubuchon directed Deputy County Attorney Mike Baker to advise the Grand Jury meeting on the following day, January 6<sup>th</sup> that there had been a development in the investigation and requested that the Grand Jury remain in recess as to the investigation. The Grand Jury decided not to recess the matter but directed the Deputy County Attorney to report weekly on the status of the investigation.

On March 3, 2010 Deputy County Attorney Lisa Aubuchon appeared before the Grand Jury. She advised the Grand Jury that a court had granted a stay in the Gary Donahoe matter so he could go to the Supreme Court. She further advised the Grand Jury that in an unrelated matter involving Supervisor Wilcox that the court had disqualified the Maricopa County Attorney's Office based on a conflict of interest. She further indicated that based on this ruling that the Maricopa County Attorney's Office had decided to dismiss cases against another supervisor, Don Stapley and Judge Donahoe. Ms. Aubuchon specifically requested that the Grand Jury return the matter to the County Attorney's Office so that when a special prosecutor was found, they could make the determination on how to proceed. At least two of the Grand Jurors asked about their other options. They were advised that they could ask for a draft Indictment, end the inquiry, or call for more witnesses or evidence. The Grand Jury voted to end this inquiry.

Ending the inquiry means that the Grand Jury determines after the evidence has been presented that there is no probable cause, that additional evidence and/or witnesses will not make a difference and that the Grand Jury does not want to see a draft Indictment. In the proceedings

before the Maricopa County Grand Jury In Re: Orientation, the 494 Grand Jury was advised as follows concerning the meaning of "end the inquiry":

End inquiry means that the case is so bad there's no further evidence that could be brought to you folks, you don't even need to see the law, which the reason why people ask for draft indictments is because that contains the law that applies to this particular case. Okay. And you will apply the facts to the law. Well, you don't even need to see that. This case is so bad you don't want to go any more into the case than you just have. There's no further evidence that's necessary. There's no law that you can conceive indicting this person under. That's what ending inquiry means. It's the same thing effectively, as a no true bill. The difference is with a no true bill you've actually got the law in front of you in the form of the draft indictment and you reject it.

(494 Grand Jury Orientation, p. 59)

In March 2010, Gila County Attorney Daisy Flores, agreed to review the Wilcox and Stapley II matters which had been dismissed by the Maricopa County Attorney's Office. On April 2, 2010 Deputy County Attorney Lisa Aubuchon sent to Ms. Flores under separate letter a memorandum and departmental report on what has been previously identified as the "bug sweep investigation." She requested that Ms Flores review the matter and confer with the Sheriff's Office. A copy of the Memorandum is attached as Exhibit 1. While Ms. Aubuchon mentioned the Grand Jury proceedings, she did not inform Ms. Flores that the Grand Jury had voted to end the inquiry. Ms. Flores immediately returned the matter to the Maricopa County Attorney's Office indicating that she didn't know under what authority Ms. Aubuchon was acting and that in no event had she agreed to review this as a conflict matter. A copy of Ms. Flores letter is attached as Exhibit 2.

On April 30, 2010, Robert Driscoll, an attorney representing the Maricopa County Sheriff's Office sent a letter along with several investigative summaries to the United States Department of Justice requesting that they conduct an investigation into what was described as corruption in Maricopa County government. Among these summaries were the "bug sweep investigation" and the "court tower investigation." The "bug sweep investigation" summary

made specific reference to the departmental report that had previously been sent to Gila County Attorney Daisy Flores and specifically mentioned the Grand Jury presentation. Neither the letter nor the investigative summaries mentioned that the Grand Jury had voted to end the inquiry. A copy of the letter and investigative summaries concerning the "bug sweep investigation" and the "court tower investigation" are attached as Exhibit 3.

On July 9, 2010, Chief Deputy David Hendershott held a press conference to announce that the Maricopa County Sheriff's Office intended to disclose criminal evidence against Maricopa County Board of Supervisors and senior county managers. On July 10, 2010, the Maricopa County Sheriff's Office issued a press release along with an e-mail that was sent by Chief Hendershott to Maricopa County Risk Manager Peter Crowley detailing some of the allegations. A copy of the Press Release and the text of the email to Mr. Crowley are attached as Exhibit 4. The Press Release and accompanying email make criminal allegations against Board member Andrew Kunasek. The email also alleges that one of the pending felony investigations is against Deputy County Manager Sandi Wilson. The press release also accuses County Attorney Rick Romley of violating ethics and possibly giving Andrew Kunasek a pass on the criminal investigation in exchange for getting his vote on Mr. Romley's appointment as County Attorney. It is clear from the documents that the investigation in question is the "bug sweep investigation." There is specific reference to the investigation having been sent to Gila County Attorney Daisy Flores and that she returned it as not within the scope of her engagement. Furthermore, there is reference to theft of public money in the amount of \$15000. Nowhere in the press release or accompanying email is there any indication that the 494 Grand Jury clearly rejected both the "bug sweep investigation" and the "court tower investigation" by voting to end the inquiry.

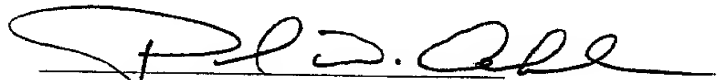
Chief Hendershott has made serious public allegations of criminal misconduct against a Board member, senior county management and the County Attorney on matters that were decided by the 494 Grand Jury to be meritless. His public statements are a gross misrepresentation of the facts and are extremely unfair to those individuals that were the targets of the Grand Jury investigation.

The State respectfully requests that the court unseal the Grand Jury Transcripts, draft Indictment, and any other matters attendant to the 494 GJ 156 presentation. The State is willing to contact the individuals or their attorneys that were the target of this GJ investigation to determine if they have any objection to the release of the materials. Pursuant to ARS §13-2812 the court has the authority to allow disclosure of Grand Jury material when it is in the furtherance of justice.

Respectfully submitted this 20<sup>th</sup> day of July, 2010.

RICHARD M. ROMLEY  
MARICOPA COUNTY ATTORNEY

By:

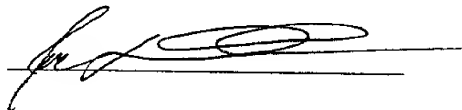


PAUL W. AHLER  
CHIEF DEPUTY COUNTY ATTORNEY

Copy of the foregoing mailed/delivered  
this 20 day of July, 2010, to:

The Honorable Ruth McGregor  
Special Master

By



# **EXHIBIT 1**

CONFIDENTIAL MEMORANDUM

TO: PROSECUTING ATTORNEY

FROM: LISA AUBUCHON

RE: SUBMITTAL ON MARICOPA COUNTY SHERIFF'S OFFICE  
DR 09-048645

DATE: APRIL 2, 2010

This case was part of a larger hindering prosecution, bribery and obstruction of justice investigation. Most of that case has been sent to the Department of Justice to investigate. However, this matter is a specific state crime violation submittal and is being sent to your office with a request that you review and follow up directly with MCSO on any matters. Thank you very much.

This particular matter was presented to the county grand jury as part of an overall investigation into local corruption. It was presented late in the day and the court made the grand jurors recess after they had requested a draft indictment. Before the grand jurors could finish deliberating at the next setting, a judge entered a stay as to one of the suspects, Gary Donahoe, so I asked the grand jurors to stop considering the matter until that issue was resolved. The stay was eventually resolved after the Supreme Court declined jurisdiction. However, in the meantime, a judge in the Mary Rose Wilcox matter made a finding that our office had a conflict and based on that finding, our office decided to dismiss the matters relating to other county officials and it is my understanding you agreed to review the Stapley and Wilcox matters. The case on Gary Donahoe was sent to the Department of Justice as part of the overall corruption investigation. However, this case is limited in scope and MCSO has submitted it for review as to the limited state crimes. If you eventually decide to go forward with charges, parts of that presentation may need to be accessed or disclosed after court order, as it is all a sealed grand jury proceeding, so I am providing you with that grand jury number, 494 GJ 156, January 4, 2010. After the presentation, requests were made by David Smith and Sandi Wilson that if cases were presented to a grand jury, they are requesting they be allowed to testify.

Thank you and if you have any questions, please feel free to contact me.



# **EXHIBIT 2**

Patti Wortman, Chief Deputy  
Bryan R. Chambers, Chief Deputy/Civil Division  
Jeff Dalton, Child Support Division



Ramui Alvarez  
Carolyn Borcharding  
Pascal Brown  
June Ava Florescue  
Raymond Geiser  
Lacy Hakim  
Kyle Mann  
Wendy McHood  
James Parker

## GILA COUNTY ATTORNEY

*Daisy Flores*

April 5, 2010

Keith Manning  
301 West Jefferson, 8<sup>th</sup> Floor  
Phoenix, AZ 85003  
Fax # (602) 506-6149

RE: Confidential Memorandum from Lisa Aubuchon and MCSO Supplemental DR#: 09-048645

Dear Keith:

Please find attached the Confidential Memorandum from Lisa Aubuchon and Maricopa County Sheriff's Office Supplemental Report to DR #09-048645. This was received by me on April 2, 2010, by FedEx delivery. I have no idea why Ms. Aubuchon would believe it is appropriate to submit this matter to me in this manner. Her memo does not indicate if she is acting at the direction of any supervisor and I am unfamiliar with what her current duties or role is with your office. Additionally, in light of the resignation of Mr. Thomas as the Maricopa County Attorney I cannot assume she has the authority to seek conflict counsel on behalf of your office at this time.

Ms. Aubuchon specifically requests that my office review the matter and "follow up directly with MCSO on any matters." At no time has my office been requested, nor have we accepted, as a conflict matter the review of any allegations as to Sandi Wilson, Stephen Wetzol or Andrew Kunasck. The agreement my office has with Maricopa County Attorney's Office is that we will review only the Donald Stapley II and Mary Rose Wilcox matters. We also agreed all communications will occur solely through you. All involved with this matter understand that there needs to be a true separation between the Maricopa County Attorney's Office and my office so that there is no appearance of interference or impropriety.

I am returning this file to you for processing and I have copied Ms. Aubuchon herein. My office has made no charging decision in reference to this matter and we will not be contacting the Maricopa County Sheriff's Office to discuss this matter. As Ms. Aubuchon was significantly involved in the original Stapley and Wilcox matters conflicted to my office, I would respectfully request that Ms. Aubuchon not initiate any communication with my office on any matter. If we wish to contact any Maricopa County Attorney's Office staff, we will make arrangements directly through you. I appreciate your attention to this matter.

Sincerely,

*Daisy Flores*  
Daisy Flores  
Gila County Attorney

cc: Lisa Aubuchon

Globe Main Office:	1400 E. Ash Street, Globe, AZ 85501	Phone: (928) 425-3231 Ext. 8630	Fax: (928) 425-3720
Globe Downtown Office:	155 S. Broad Street, Globe, AZ 85501	Phone: (928) 425-4120	Fax: (928) 425-9797
Globe Child Support Office:	157 S. Broad Street, Globe, AZ 85501	Phone: (928) 425-4464	Fax: (928) 425-7520
Payson Office:	714 S. Beeline Hwy Ste. 202, Payson, AZ 85541	Phone: (928) 474-4068	Fax: (928) 474-9066

# **EXHIBIT 3**

# ALSTON & BIRD LLP

The Atlantic Building  
950 F Street, NW  
Washington, DC 20004-1404

202-756-3300  
Fax: 202-756-3333  
www.alston.com

Robert N. Driscoll

Direct Dial: 202-756-3470

E-mail: bob.driscoll@alston.com

April 30, 2010

*VIA HAND DELIVERY*

**RECEIVED**

**APR 30 2010**

**PUBLIC INTEGRITY SECTION**

Deputy Chief Raymond Hulser  
Public Integrity Section  
United States Department of Justice  
Bond Building, 12th Floor  
1400 New York Avenue, N.W.  
Washington, DC 20530

Re: Maricopa County Sheriff's Office - Public Corruption Investigations

Dear Mr. Hulser:

I write on behalf of my client, the Maricopa County Sheriff's Office ("MCSO"), to follow-up on my March 17, 2010 letter to you regarding the referral of certain public corruption matters from the MCSO to the Public Integrity Section ("PIN"). As I stated in previous my letter, it is my understanding based on your March 13, 2010 letter that it is PIN's preference that the MCSO provide summaries of the matters that the MCSO seeks to refer to PIN rather than providing complete productions of all investigative materials related to those matters. As such, enclosed please find summaries of public corruption investigations conducted by the MCSO that the MCSO respectfully requests that PIN consider. Please note, however, that due to the brevity of the summaries and the complexity of some of the investigations, MCSO has also provided investigative materials in CD format that correspond to each of the summaries for your convenience should the reviewer wish to use them.

I also write to provide some important context about the current political situation in Maricopa County. As you may or may not be aware, former Maricopa County Attorney Andrew Thomas recently resigned his office to run for Attorney General of Arizona. In the wake of Mr. Thomas' resignation, the Maricopa County Board of Supervisors appointed Richard Romley as Acting County Attorney. This is significant insofar as Mr. Romley represented the Maricopa County Board of Supervisors and its members in connection with a number of the matters that the MCSO is asking PIN to review. Due to his prior involvement in these matters, it would appear that Mr. Romley has a conflict of interest which precludes him from handling these cases going forward.

Deputy Chief Raymond Hulser  
April 30, 2010  
Page 2

This situation highlights the fact that PIN review of these matters (regardless of the result) is necessary.

To the extent that you have questions about the summaries provided herein, the MCSO is willing to bring the appropriate person(s) to Washington, D.C. to provide further information or context if it would be helpful in the course of PIN's consideration. Please do not hesitate to contact me with any questions or for further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert N. Driscoll", written in a cursive style.

Robert N. Driscoll

Enclosures

LEGAL02/31889624v1

## ILLEGAL USE OF TAXPAYER FUNDS TO CHECK FOR LAW ENFORCEMENT LISTENING DEVICES

(A copy of this matter has been sent to FBI Phoenix for their  
information)

Investigative Report being provided on CD 09-048645

### Synopsis

After Donald Stapley was served with an indictment on December 2, 2008, Supervisor Andrew Kunasek, having been served with a target letter regarding unlawful grand jury disclosure as it related to the Stapley indictment, immediately, with the assistance of Assistant County Manager Sandi Wilson and IT director Stephen Wetzel, conspired to secretly utilize taxpayer funds to determine if law enforcement listening devices were present on the telephones and offices of senior county officers and elected personnel. Thomas Irvine was brought in to provide legal advice and negotiate with the private vendor. The private vendor was kept in the dark regarding the reason for the search and nature of the listening devices. A staff member in Wetzel's IT department was instructed to put the expense on her county credit card and not to discuss the payment and transaction with anyone. Approximately a month later, a search warrant was served on Stapley's county office. Immediately, Wilson approved the use of taxpayer dollars to ascertain if Sheriff's detectives had listening devices on key elected officials and senior staff. During this time, attorney Thomas Irvine negotiated with the private vendor, implied that the vendor would get future contracts for work and attempted to have the private vendor sweep Donald Stapley's personal residence. By this time, the vendor had realized that he was being asked to locate law enforcement listening devices and the vendor through his attorney notified Irvine that should a law enforcement listening device be located, that Stapley would not be informed and that the law enforcement agency would be notified. Upon learning this information, Irvine requested all of his documents returned in an effort to cover his tracks for privately representing Stapley (Irvine declined to answer on the witness stand who he represented in Maricopa County and other government agencies) in an attempt to negotiate the check of his residence.

Sheriff's Office detectives learned about the county expenditures from a newspaper article written by Yvonne Wingett from the Arizona Republic. Wingett, upon learning that her story caused a criminal investigation to ensue regarding the illegal expenditure of taxpayer dollars, secretly and immediately telephoned Maricopa County senior officials and warned them that she had exposed the illegal expenditure (the Sheriff's office learned of this call from Arizona Republic reporter JJ Hensley who was present in the room when Wingett made the call). Wingett profusely apologized for getting senior county officials in trouble by exposing the county's attempt to ascertain if law enforcement listening devices were present.

Over the next few months, Wingett clearly wrote articles critical of the Sheriff's Office attempting to defend Supervisor Kunasek, Sandi Wilson and Stephen Wetzel's illegal conduct. The most notable being her writing about Sandi Wilson's publicly stated position that the check for listening devices was done to "calm the fears of employees that were so terrified that they could not do their jobs." However, unknown to senior county officials, Sheriff's detectives, over a weekend, interviewed some 40 county employees. The super majority of these employees expressed to detectives that not only were they not in fear of the Sheriff's Office detectives but they had not been told that their phones were being checked or why by anyone from county management. Most expressed that they did not even know Stapley had been indicted (all of these interviews were tape recorded without the knowledge of the person being interviewed). It is interesting to note that the only mention of fear of retaliation was by the husband of a senior county official that feared retaliation from County Manager David Smith if it was learned that his wife had talked to detectives, the husband making it clear that Smith would fire his wife in retaliation.

Wingett continued to write a series of articles criticizing detectives and stating that they had intimidated these 40 employees by showing up at their personal residences rather than talking to them at work. The articles gradually led to a changing of Wilson's first story (the search was done to ease the fear of county employees) to the search was for "illegal" listening devices which had never been mentioned before. The county later hired Irvine's firm to represent all county employees preventing the Sheriff's Office from interviewing them.

On the day this case was taken before a Maricopa County Grand Jury (this information remains sealed) senior detectives and command officers as well as the assigned chief prosecutor were observed by court commissioners and staff seated outside the grand jury room. The case was presented before the grand jury who requested a draft indictment, but was unable to conclude that night due to the court commissioner stating they had to recess at 5:00 p.m.. The next day, a judge in the Gary Donahoe criminal matter unexpectedly granted a stay of proceedings against Donahoe pending a Arizona Supreme Court matter despite the Supreme Court denying a stay. Despite the confidential nature of this presentation, requests were made by two of the suspects requesting they be allowed to appear before the grand jury if they were considering any matter. The grand jury investigation was eventually terminated due to a ruling by another judge that the County Attorney had a conflict (subject of appeal). In addition, two days after the presentation, senior county officials involved in this grand jury matter, went public that they had been subpoenaed by a federal grand jury presumably on Tuesday. It is our belief that senior county officials learned that this indictment and others were being presented to the grand jury and that Maricopa County manager David Smith and Sandi Wilson both subjects of the pending grand jury matter, either personally or through their counsel Irvine or his partner Ed Novak, requested that they immediately be subpoenaed to the grand jury. Smith and Wilson publicly first stated that they were working with and meeting with federal prosecutors to prepare their testimony against the Sheriff, Chief Deputy Hendershott and detectives for "abuse of power." They also suggested to the media that prosecutors told them they were now protected witnesses in order to try and shield themselves from any criminal liability. By the week's end, Smith totally recanted his position on working with the federal prosecutors to prepare their testimony and claimed he knew nothing about what they wanted to talk about (see Channel 15 Josh Bernstein's reports). The overall timing and very public disclosure of the federal grand jury makes it clear to Sheriff's investigators that Smith, Wilson and other county officials learned that there was a pending indictment and they sought to deflect these charges by hiding behind the federal investigation.

#### People Involved



Donald Stapley  
Supervisor of Maricopa County

Andrew Kunasek  
Supervisor of Maricopa County

David Smith  
County Manager

Sandi Wilson  
Assistant and Acting County Manager

Stephen Wetzel  
Director of Maricopa County IT department

Thomas Irvine  
Attorney for several county entities

Yvonne Wingett  
Arizona Republic reporter

JJ Hensley  
Arizona Republic reporter

Violations of Law  
Theft  
Fraudulent Schemes  
Misuse of Funds  
Forgery  
Perjury

## Court tower

Investigative Report being provided on CDs and in Court Tower Obstruction and Retaliation documents file 09-225204 and 08-229851

### Synopsis

In 2006, Maricopa County authorized the largest capital improvement project in county history, a \$375 million court tower. According to Presiding Judge Barbara Mundell, Donald Stapley told her to hire Thomas Irvine for the project and she felt she needed to do so in order for the project to go forward and appease Donald Stapley's request. Thomas Irvine has a long history of dual representations involving questionable representation of multiple parties and has been appointed to numerous county boards and commissions. Irvine was publicly described as a space planner not an attorney. Later, during the obstruction of this investigation, it was learned that Irvine was in fact legal counsel for parties directly involved in the court tower project (courts, Board of Supervisors, winning construction contractor and Stapley himself).

In late 2008, the economy took a major downturn forcing budget revisions. After a meeting in October, County Treasurer Charles Hoskins brought forward grave concerns of possible financial wrongdoing on the part of Board members and senior county managers regarding the funding and spending related to the court tower project. Specifically he raised the failure of county administration and the BOS to disclose information that he in his elected capacity as treasurer requested. Hoskins questioning the BOS raised their ire and feared that county officials would take money without his permission from the Treasurer's funds. Hoskins threatened to sue the BOS and he was subsequently directly threatened by Supervisor Stapley and Supervisor Wilson not to file any lawsuit against the BOS or his budget and personnel would be cut, specifically targeted were Hoskin's IT staff that monitored financial transactions between his office and the county's office of budget and management. Hoskins filed his lawsuit and the BOS in fact immediately cut his budget and seized his IT personnel positions which prevented him from doing his constitutional duties. Hoskins filed a criminal complaint with the Sheriff's office regarding the

intimidation and subsequent retaliatory cutting of his budget as well as his concerns over how and why the county was in his opinion inappropriately utilizing taxpayer dollars to fund a court tower when other mandated services to taxpayers took priority.

Given the complaint of Treasurer Hoskins and the prior history of senior county management and the BOS to falsify information to auditors, senior state legislators, outside accreditation agencies, and other county elected officials that had experienced intimidation and retaliation, the Sheriff, the Sheriff's Office, the Maricopa County Attorney and the County Attorney's Office felt it was appropriate to go forward with a grand jury investigation to ascertain if in fact Hoskin's concerns about the Board and senior county management had validity. In addition, information handed out at various meetings raised concerns from other departments about unexplained and highly unusual and unnecessary budgetary items such as Irvine's hiring as a "space planner" which was later determined to be in fact a hidden attorney client relationship with the Board, the courts, the winning contract bidder, and Stapley himself. Failure to address these very public and volatile concerns of potential corruption within Maricopa County government would have been tantamount to malfeasance on the part of the investigative officials that became aware of them.

After Donald Stapley was served with an indictment on December 2, 2008, Thomas Irvine assisted with using taxpayer funds to sweep the county offices for law enforcement listening devices. He then provided legal advice to the Board of Supervisors, the entity paying for the superior court's criminal court tower, that they had the right to relieve the County Attorney of their statutory civil duties. After a grand jury subpoena was served on county management on December 12, 2008, Irvine was hired to quash the subpoena that requested information on the court tower project, even though he was a target of the investigation and counsel for the courts, BOS and winning bidder in project. Irvine's partner, Edward Novak, had been brought in within days of Stapley's indictment to assist the BOS in records production. Novak eventually assumed the role of legal counsel for all BOS and all county employees and continued his multiple representations. Irvine then filed a Motion in front of the criminal presiding judge to quash the court tower subpoena and disqualify the County Attorney. Despite the County Attorney's request to disqualify Irvine and the court due to the fact that Irvine

was the employee (space planner) of the very court he was appearing in front of to quash subpoenas relating to their relationship, the court ignored the later discovered attorney client relationship with the courts and Irvine. The court through Gary Donahoe then disqualified the County Attorney and found no conflict for the other parties.

It was later discovered that Irvine was in fact the lawyer for the superior court on the court tower matter at the same time he was appearing before the superior court representing the Board, the entity that was paying for the court tower. Donahoe refused to acknowledge neither the criminal court's conflict nor his conflict as the criminal presiding judge. Donahoe then assumed point position to tactically handle any and all motions that would serve to further the investigation into the court tower project, including issues related to Donald Stapley such as unilaterally taking cases outside of the normal case assignment process. He presided over civil and appellate cases not assigned to him but directly impacting criminal investigations into Donald Stapley, swiftly setting one matter within one day of a filing. Donahoe accepted a bizarre pleading by Irvine attempting to further obstruct any future investigations or prosecutions by all MCAO attorneys against any county employee or officer was stopped by another judge after Donahoe was charged with a criminal complaint. Judge Mundell was the presiding judge who was directly over Donahoe.

According to Sandra Dowling, Donald Stapley wanted the Pappas School land to swap with the City of Phoenix for the Madison Street closure in order to complete the Court Tower. That was in fact accomplished. Ms. Dowling believes that is why filed the complaint against her.

After the indictment of Donald Stapley and the initial subpoena on the court tower information, the County, with its attorneys, Wade Swanson, Thomas Irvine and Edward Novak, engaged in retaliatory and oppressive conduct against the Maricopa County Attorney's Office and Maricopa County Sheriff's Office. Examples of this action include the unilateral transfer of most of the civil attorneys from MCAO to a newly formed special litigation section that reported to the County Manager David Smith. The Board of Supervisors also, through the assistance of the named attorneys established policies contrary to law to protect any attempt to obtain public records or file a lawsuit against the County for their illegal actions. The Board

required that some of the civil attorneys as a condition of employment, to sign a "conflict waiver" and sign a "loyalty oath" to county management, not the County Attorney. This requirement was also imposed on any outside attorney that represented any county employee in any trust manner. County Finance was ordered not to pay the Sheriff's Office attorneys' fees. Additionally, the County illegally took control of Zone 2, in violation of state and federal law. Maricopa County intervened in MCAO's attempts to obtain a deposition of Stapley's friend Conley Wolfswinkel and asked for sanctions against the prosecutors. Irvine's partner, Edward Novak, State Bar president, informed the prosecutor on Stapley that a bar complaint had been filed against her boss on the matter. Maricopa County conflict counsel, Richard Stewart, while attempting to locate counsel for the Sheriff, contacted attorney Timothy Casey and relayed that he and David Smith were looking for counsel for the Sheriff that would be willing to tell the Sheriff he did not have a basis for a claim.

#### Timeline

10/16/06 Board approved Capital Improvement Project to add "Court Tower" c-70-07-017-0-00  
10-11/06 Thomas Irvine brought in to represent court- space planner per public but actually counsel  
1/17/07 contract to Gould Evans for programming c-70-07-033-5-00  
3/07 Gould Evans hired as design contractor?  
6/17/07 Gould Evans programming and design new contract c-70-07-054-5-00  
9/19/07-11/20/07 formal approval 3325-07-380 fmd07-012,013  
\*emails seized  
9/17/07 Treasurers lawsuit computer system/IT people  
10/6/08 Kunasek mtg Judge Ore, Hoskins, Mundell, Marcus R, Arpaio, Hendershott, Thomas, MacDonnell, other agencies  
Hoskins approached about concerns over court tower, lack of sharing of info, spending of \$ etc. "retaliation of for questions about court tower"  
12/2/08 Stapley served with indictment  
12/5/08 Irvine brought in to fire MCAO  
12/12/08 Grand Jury subpoena for court tower investigation  
12/23/08 Irvine hired to quash subpoena motion filed

set before Gary Donahoe  
Public records request for court tower  
12/31/08 lawsuits filed re civil division  
1/9/09 Daughton appointed by Mundell  
1/9/08 request for Wolfswinkel depo filed  
1/13/08 MCAO files to disqualify court, Irvine  
1/22/09 Search warrant on Wolfswinkel business  
2/6/09 MCAO disqualified, rest are not, no disclosure from court or  
Irvine about attorney client relationship on tower  
2/18/09 Stapley discloses grand jury info to Henze  
2/19/09 MCAO filed OSC  
2/25/09 Grant Woods files Motion to Controvert  
2/26/09 Donahoe sets hearing on SW case involving Wolfswinkel  
depo case-not his case, sets one day after filing  
Donahoe picks up appeal for Wolfswinkel-not his case  
May 2009 additional \$917,424 approved for furniture consultation by  
Gilbane  
6/08/09 Learned from Channel 15 about client relationship  
County brings Novak in to advise employees not to talk to Sheriff's  
Office  
8/28/09 Donahoe holds OSC hearing on transports  
9/18/09 Stapley dismissed after Fields throws out misdemeanors,  
appeal done  
9/25/09 Daughton upholds County's firing of MCAO  
9/28/09 Donahoe finds Trombi in contempt of court  
9/29/09 policy regarding public records  
10/5/09 Special Prosecutors hired  
10/19/09 County refuses to approved special prosecutors  
10/21/09 Oral Argument on civil division, jurisdiction accepted on  
special action STILL UNDER ADVISEMENT 4/14/10  
10/21/09 BOS adopts polices requiring ADR before suit  
10/26/09 Smith demands MCAO attorneys disclose blogging etc.  
11/13/09 Irvine files motion with Donahoe to stop Special Prosecutors  
and all DCAs  
11/17/09 Smith files bar complaint against Thomas, Aubuchon,  
Lotstein, Alexander  
12/1/09 RICO complaint filed in federal court  
12/7/09 Donald Stapley and Mary Rose Wilcox indicted  
12/9/09 Criminal complaint against Donahoe  
12/09 Steinle ruling questioning Irvine/Donahoe and motion

2/10 MCAO removed from Wilcox case, ruling appealed  
2/10 Supreme Court declines jurisdiction  
2/10 MCAO dismisses Stapley and Donahoe and sends Stapley and Wilcox to Gila County  
3/10 discovery that Maricopa County had secretly taken emails from most County agencies

People involved/relationship to matter

Thomas Irvine

Special AG for Goddard  
Personal Attorney for Stapley-advised on bug sweep of home  
Personal Attorney for Wolfswinkel  
Attorney for Maricopa County  
civil division 12/08  
Dowling  
Treasurer's case against Board 9/08  
GJ court tower matter 12/08  
Emails- Receipt and intervention in Federal Grand Jury subpoena 2/09;  
Emails- Secretly keeping subpoenas 10/08  
Motion to Stop Special county attorneys/all DCAs 12/09  
Salary case with Chief Hendershott 2001  
Shughart firm represented Gould Evans winner of court tower bid 3/07  
Appeared in back of court at a hearing in civil action to get Wolfsinkel deposition  
Involved in land swap of Madison street for Pappas school land?  
Failed to disclose existence of emails to federal courts

Edward Novak

Attorney for AG Goddard's office on AG investigation  
Attorney for Maricopa County  
GJ court tower matter  
representing employees in court tower obstruction investigation  
Attorney for Maricopa County Board of Supervisors  
Partner with Thomas Irvine  
Shughart firm represented Gould Evans winner of court tower bid 3/07

Appeared in back of court at a hearing in civil action to get  
Wolfswinkel deposition  
State Bar president 2008-09/Board member 1999-present  
intervention in bar complaints against Thomas  
"threat" to Lisa Aubuchon by informing her of Stapley bar complaint  
against Thomas while she is handling

Wade Swanson

Action against Thomas/Aubuchon on civil deposition  
speaking out against "clients"  
provided false opinions on legality of special prosecutors  
hiring of Irvine on variety of matters  
Appeared in executive session knowing adverse to MCSO and then  
publicly criticized MCSO on matter

Barbara Mundell

court tower  
media accusations  
appointment of judges

Gary Donahoe

Court tower nondisclosure/conflicts  
Wolfswinkel involvement  
"injunction" against special prosecutors/DCAs- Steinle minute entry

Anna Baca

Stapley case- court found conflict but she continued to hear matters  
to kick us off, struck our motion for change of judge for cause  
then refused to set our hearing re: Fields  
Hoskins went Baca about Fields and MCAO

Ken Fields

despite conflict presiding over Stapley  
behind bar complaints

Don Stapley

court tower  
hiring of Irvine/Novak  
Civil division take over



public records and lawsuit policies to hinder investigations  
extortion of treasurer to get computer system  
special prosecutors action/injunction

Mary Rose Wilcox

court tower  
hiring of Irvine/Novak  
Civil division take over  
public records and lawsuit policies to hinder investigations  
special prosecutors action/injunction

Andrew Kunasek

court tower  
hiring of Irvine/Novak  
Civil division take over  
public records and lawsuit policies to hinder investigations  
special prosecutors action/injunction

Fulton Brock

court tower  
hiring of Irvine/Novak  
Civil division take over  
public records and lawsuit policies to hinder investigations  
special prosecutors action/injunction  
Zone 2

Max Wilson

court tower  
hiring of Irvine/Novak  
Civil division take over  
public records and lawsuit policies to hinder investigations  
special prosecutors action/injunction

David Smith

Threat involving court tower to Hendershott  
court tower involvement  
public statements against MCSO  
working with feds against MCSO/MCAO  
Hiring Irvine/Novak  
practice law w/o license

worked with Stewart to hire conflict counsel adverse to MCSO

Sandi Wilson

used taxpayer funds to fund private vendor to protect employees from  
law enforcement listening device after staplely indictment  
involved in civil division take over  
court tower  
conflict counsel issues

Potential Violations of Law

Bribery

Obstruction

Hindering

Theft

Fraud Schemes

Conflict of Interest

Procurement Violations

# **EXHIBIT 4**

# Maricopa County Sheriff's Office

## Joe Arpaio, Sheriff



Follow up to Chief Deputy David Hendershott's July 9, 2010 Media Conference

Date: July 10, 2010

### Maricopa County Sheriff's Officials to Disclose Criminal Evidence in Move to Protect Taxpayers' Money

*interim county attorney violating ethics and possible quid pro quo to obtain appointment*

(Phoenix, AZ) To protect Maricopa County taxpayers, the Maricopa County Sheriff's Office will disclose investigative findings of criminal probe of Maricopa County Board of Supervisors and senior county managers.

Sheriff's investigators will hand over all investigate records on all claimants, county officials and others involved in high profile cases to Maricopa County Risk Manager Peter Crowley, but demand that non-conflicted, out-of-state risk manager be appointed by a judge, to review all evidence, and investigative materials. Since Risk Manager Peter Crowley has refused to recognize the current state of conflicts, the evidence will presented to Crowley and the assigned risk manager to protect the interests of Maricopa County taxpayers and deputy sheriffs involved in these serious investigations.

The County Board of Supervisors have sought to circumvent the judicial process by creating a highly suspect dispute resolution process the which will not recognize the alleged wrong doings of claimants against the County.

Under legal regulations, the dispute resolution process voted on by Supervisor Andrew Kunasek should be held null and void. Kunasek, in violation of conflict of interests rules, illegally voted, while knowing of his pending criminal investigation by Maricopa County Sheriff's Office.

Interim county attorney Rick Romley having full knowledge of Kunasek's pending criminal investigation, and Kunasek's participation in a free-talk with his criminal attorney and the assigned prosecutor, has unethically allowed Kunasek's illegal vote to go uncontested. Romley's inaction clearly violates his ethical duties as interim county attorney, and seriously calls into question what deals may have been made to obtain support for Romley's appointment. Romley has been repeatedly asked assign an outside conflict free prosecutor when this criminal investigation of Kunasek and others was returned by Gila County Attorney Daisy Flores; Flores noted the case was not within the scope of her engagement. After Romley's denial of repeated requests for his office to reassign the criminal case to another Arizona county attorney's office, or engage County Attorney

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News Release

Flores to prosecute the case, he proffered a meaningless suggestion to turn the case over to the United States Department of Justice, full well knowing that a theft of public money in the amount of only \$15,000.00 will never reach the prosecutorial threshold of the United States Department of Justice and the use of the resources of the United States government .

Sheriff's officials have noted the County that the assigned County Risk Manager, Rocky Armfield, violated his ethical duties to the Maricopa County Trust, and that he intimidated the Sheriff's assigned legal counsel, and his subordinate risk manager to settle claims, stating *the Board of Supervisors are gods and that under no circumstance can the board be deposed.*

According to the Sheriff's Office, Armfield asked the Office's attorney, Maria Brandon, *to pull punches should she depose Supervisor Mary Rose Wilcox*, during potential litigation.

Included with this media release is the text of correspondence between Chief Deputy David Hendershott and Mr. Peter Crowley.

<end>

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# LETTER FROM HENDERSHOT TO CROWLEY

From: David Hendershott - SHERIFFX

Sent: Saturday, July 10, 2010 1:41 PM

To: Peter Crowley - RMX

Subject: Corrections from draft email sent on Friday 7/9/10

Peter,

The Sheriff's Office would like a meeting with you and Mr. Armfield regarding an analysis of the pending claims by the BOS and your supervisors.

We have and will provide you with all of the evidence against these BOS and County Management which proves these claims are frivolous and should not be allowed to move forward to mediation.

I will also give you direct evidence of actions on the part of Mr. Armfield that will show he has been intimidated by the BOS and Wade Swanson.

I want to make my self clear that Risk Manager Rocky Armfield has not preformed his duty and responsibility to the Trust and to the Sheriff's Office. Regardless, we will give you all of the criminal evidence against the BOS, County management, judges, and outside claimants. You can not ignore our complete disclosure of criminal activity before you chose to abandon the responsibly that you have to the taxpayers, the Trust, the Sheriffs office and its employees. You keep telling me that you are responsible for the Trust, and for protecting it. It would be malfeasance for you to ignore my demand to review the disclosure of criminal evidence against the claimants and others that we will present at trial. This will save the Trust millions of dollars in unnecessary payouts. You will see first hand the crimes committed by these people including crimes not yet indicted and/or disclosed.

I am also forwarding this latest information to the assigned Special Prosecutor in the Don Stapley and Mary Rose Wilcox criminal cases. I will also disclose Andy Kunasek's violation of the conflict of interest rules that occurred when he voted for the so called Resolution process, while knowing that he is currently under criminal investigation, and that he had participated in a pre-indictment free-talk at the request of his personal criminal attorney.

I will also provide you evidence that prior to Rick Romley's appointment as the interim county attorney, Andy Kunasek or his agent disclosed to Romley this pending investigation and the pre-indictment free-talk with the prosecutor. We are deeply concerned that given the fact that Rick Romley was the attorney for the BOS and Kunasek, that Kunasek used this contact as a means to obtain the assurance of Romley's support to stop the criminal investigation on Kunsek. In support of this, Romley has refused numerous requests to send this investigation to an outside prosecutor. I have also learned that Rick Romley communicated to a reporter from the Arizona Republic that the case had no merit, which is a tremendous prosecutorial breach of Romely's ethical responsibilities given his direct conflict as Kunasek's prior attorney.

Given all of the aforementioned, Kunasek clearly violated the conflict of interest rules when he cast his vote for the so called mediation process.

These criminal cases contain details that must be considered and would legally void any vote on the fraud of the mediation process that has been undertaken. You can not let this process continue until you have seen the evidence of the pending case that deals with Kunasek's vote if you insist that you remain the administrator of the trust.

I will warn you that one of the pending felony investigations is on your direct supervisor Sandi Wilson. Any disclosure of the evidence against her or other members of the BOS, David Smith and all of the claimants would be inappropriate. Carefully consider your actions and protect your own interests in this matter. I will let you know that our evidence against Rocky Armfield is all tape-recorded, as is most of the evidence against the claimants in our criminal investigations. We have not offered to release this information to you in the past as we feared that your position is also compromised, and that you share Mr. Armfield's fear of retaliation, and that you would surrender to pressure from Sandra Wilson, David Smith, Wade Swanson and the BOS to handover the criminal evidence, compromising these criminal investigations. Concern about you receiving this evidence in these pending criminal investigation is directly related to a private meeting that David Teirney, you and I had, in which you expressed that you had the decision making power on trust matter unless you were overruled by your supervisor Sandi Wilson, David Smith or the BOS, which means that you truly no independent authority. If you do not remember the conversation, don't worry I have what you said in the meeting preserved to help your recollection.

The time has come, regardless of my reluctance to trust you or your personal ethics in this matter, for you to see all the evidence. I do this to save the taxpayers from a great injustice. You may want to consult you own personal counsel due to the volatile nature of the situation, and the pressure that you will be under by your supervisors and the BOS to hand over and compromise the direct evidence in our ongoing cases against them. We will be giving direct undisclosed evidence of criminal wrongdoing on the part of the claimants.

Peter, here is your reality and your dilemma: Should Don Stapley, Mary Rose Wilcox be indicted for a third time, as well as others not yet charged, after your area has played a role in unethically ignoring evidence being turned over to you, and you choose to abandon your fiduciary duty to the Trust, taxpayers, the Sheriff and his deputies (destroying reputations), and then have indictments come out on these claimants after you have given them millions, how will you explain this to the Trust, the taxpayers, and the deputies that you have left hanging? Your worst course of action is to refuse the evidence that I am turning over to you. Make no mistake that I am turning this evidence over to you, unless you provide a safe alternative that protects your interests in this matter as well.

It will save the taxpayers millions by doing what has always been done in the past with these types of claims by suspects, and that is making claimants file lawsuits and require them to participate in discovery, which of course will never be undertaken by these claimants.

We are gathering and arranging all of the evidence and pending criminal cases now. It will take me several weeks to get it all organized and arrange for you to speak directly with the investigating detectives on the numerous cases.

I would guess that the review process for all of the criminal evidence will take approximately three weeks. This will include Grand Jury material that was gathered, thousands of pages of evidence and transcripts, tape recordings of numerous county and non county employees, and video interviews.

If you do what I believe is the safest move, you should get an outside non conflicted counsel to get the County to pick an outside non conflicted counsel to have a judge pick an impartial out of state Risk Manager with no connection to Maricopa County. This would insure that you and your risk management department plays no role in the vetting of the independent risk manager who would review the direct evidence that we have against the claimants BEFORE deciding if these claims should be settled. The taxpayers are better served by letting these cases move ahead in order to obtain direct discovery.

I can tell you if these people are forced to file their lawsuits, the lawsuit will never come because they will never stand up to the magnitude of evidence of wrong doing that we possess in these investigations. The fact that your department played a direct role in the selection of Fienburg and Skully is a conflict in itself, but you and I both know that the battle for what is right for the taxpayers, the Trust, and the Sheriff's Office is with the risk managers decision to force the lawsuits or not defend your insured, the Sheriff, and or require discovery. You and I both know that Fienburg and Skully have not been given the power to decide anything except how much money should be paid to each claimant. David Smith is in no way in the position to act as the Board to determine how much money is paid to members of the Board. The evidence that I am turning over will show abundant proof of his conflicts.

You have successfully pulled the wool over the public's eyes up to now that these so called mediations take into consideration that the investigators' actions have played a role in this fraudulent process. You and I both know that is the Big Lie, case in point Carrie Gerchick's public statements that the protester settlements were due to the deputies actions. We both know this is an obvious and rancorous lie, and that Jackie Garrett and attorney Maria Brandon in her 31 years of experience said that she stood a 100 percent chance of eliminating all of these cases by filing a motion to dismiss, which she has done thousands of times over her 31 years of service. The recordings dealing with Armfield are clear proof of the fraud against the Trust, Sheriff and taxpayers by Armfield, county lawyers and the BOS. Now, you will have the evidence of wrong doing.

Please do not ignore this. And, please carefully consider who you choose to disclose this criminal evidence to, as you are now in a position to potentially be asked to disclose evidence and information regarding these criminal matters. Because these cases involve the Grand Jury, you now have placed me in an impossible position of disclosing evidence to stop further fraud. You will have to determine the risks that you face on your own, given your personal situation, when the attempt is made to compromise yourself by county lawyers, David Smith, Sandi Wilson, and the BOS by concocting bogus justification that will require you to disclose the criminal evidence which will help suspects learn what evidence exists against them.



I will tell you that no one in the county legal team is free of conflict, this would include Richard Stewart, Wade Swanson, Tom Irvine, Ed Novak, Rick Romley and your so called carefully vetted outside attorneys that you have picked. Please tell me who you have assigned to receive this evidence, and we will start to arrange the interviews quickly.

Please make no attempt to intimidate or terminate Jackie Garrett or Maria Brandon in anyway. In the meeting that we conducted, where you attempted to chastise Brandon for the issuance of a litigation hold letter to Mr. Skully, while Brandon was acting as my attorney, Richard Stewart violated my attorney client privilege, clearly disregarding his promise to protect my privilege. This was a direct attempt to by you to intimidate my attorney, Maria Brandon. When you learned that Richard Stewart played a direct role in Maria Brandon's issuance of the litigation hold letter to Mr. Skully, you backed off from your attacks on Ms. Brandon.

Mr. Skully regardless is a witness at this point and is conflicted from any future mediation involving the Sheriff Office. His demeanor after receiving the litigation hold from Maria Brandon has been documented and was discussed in our meeting Thursday. It is clear evidence of his inability to be impartial to the Sheriff's Office from this point forward.

In my 31 years of service as a Deputy Sheriff for Maricopa County, I would like to be clear on one point: I will vigorously defend the actions of every deputy sheriff and his or her involvement in this Office's corruption investigations regardless of personal attacks on my family and me. Your latest missive of reservation of rights letter is comical and nothing more than an attempt by the BOS, senior county management, county attorneys, you, and other members of risk management to intimidate me, Sheriff Arpaio, and his deputy sheriffs from performing our sworn duty to uphold the laws of the State of Arizona and the Constitution of the United States. You, the BOS, and senior county management have seriously miscalculated your abilities to intimidate us.

I will be out of town next but will contact you when I return. I look forward to meeting with you in approximately three weeks with all the evidence.

Regards  
Chief Hendershott